

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 MARK MAYES,

11 Plaintiff,

12 v.

13 AMAZON.COM.DEDC LLC,

14 Defendant.

CASE NO. C18-176 MJP

ORDER ON PARTIAL MOTION  
TO DISMISS

15  
16 The above-entitled Court, having received and reviewed:

- 17 1. Defendant Amazon.com.dedc LLC's Partial Motion to Dismiss Plaintiff's Amended  
18 Complaint (Dkt. No. 21),  
19 2. Plaintiff's Opposition to Defendant Partial Motion to Dismiss Amended Complaint  
20 (Dkt. No. 32 and 34),  
21 3. Defendant Amazon.com.dedc LLC's Reply in Support of Its Partial Motion to  
22 Dismiss Plaintiff's Amended Complaint (Dkt. No. 35),

23 all attached declarations and exhibits, and relevant portions of the record, rules as follows:  
24

1 IT IS ORDERED that the motion is GRANTED; Plaintiff's claims for Title VII national  
2 origin discrimination and ADA disability discrimination are DISMISSED with prejudice.

### 3 Discussion

#### 4 A. Legal Standard

5 Faced with a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a court  
6 must determine whether the complaint alleges facts sufficient "to state a claim for relief that is  
7 plausible on its face." Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 337-38 (9th Cir. 1996). A  
8 court reviewing a motion to dismiss must accept all facts alleged in the complaint as true, but  
9 "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
10 statements do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

11 Ordinarily, a Court may only consider the pleadings in ruling on a 12(b)(6) motion.  
12 However, "documents whose contents are alleged in a complaint and whose authenticity no party  
13 questions, but which are not physically attached to the pleading, may be considered in ruling on a  
14 Rule 12(b)(6) motion to dismiss" without converting the motion to dismiss into a motion for  
15 summary judgment. Branch v. Tunnell, 14 F.3d 449, 454 (9th Cir. 1994), *overruled on other*  
16 *grounds by Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002). With this in  
17 mind, the Court takes judicial notice of Plaintiff's public EEOC documents in reaching its  
18 decision on this motion.

#### 19 B. Partial motion to dismiss

20 Plaintiff's amended complaint includes claims for relief under the Americans with  
21 Disabilities Act ("ADA") and under both Title VII and Section 1981 for disparate treatment,  
22 hostile work environment and discrimination based on national origin. (Dkt. No. 19, ¶¶ 19-23.)  
23 The Court has no jurisdiction over ADA claims unless a plaintiff has first exhausted all  
24

1 administrative remedies. EEOC v. Farmer Bros. Co., 31 F.3d 891, 899 (9th Cir. 1994). Also, a  
2 plaintiff cannot sue under Title VII without first filing a charge with the agency charged with  
3 oversight (in this case, the EEOC). Surell v. Cal. Water Service Co., 518 F.3d 1097, 1104 (9th  
4 Cir. 2008)(citing 42 U.S.C. § 2000e-5(e)(1)).

5 In the EEOC “Charge Form” (the formal prerequisite to filing a lawsuit under Title VII),  
6 Plaintiff did not check either of the boxes labeled “National Origin” or “Disability” in the  
7 “Discrimination Based On” portion of the form. Nor, in the “Particulars” section of that form,  
8 did he make any mention of discriminatory conduct based on national origin or disability. (Dkt.  
9 No. 22, Ex. A.) The result of this omission is unavoidable:

10 Allegations of discrimination not included in the plaintiff’s administrative charge may  
11 not be considered by a federal court unless the new claims are like or reasonably related  
12 to the allegations contained in the EEOC charge.

13 B.K.B. v. Maui Police Dept, 276 F.3d 1091, 1100 (9th Cir. 2002). Plaintiff’s allegations  
14 concerning discrimination based on national origin and disability are not “like or reasonably  
15 related to” his allegations of racial discrimination and retaliation. Therefore, the Court cannot  
16 consider them.

17 Defendant’s motion will be GRANTED: Plaintiff’s Title VII national original  
18 discrimination claim and ADA disability discrimination claim will be DISMISSED with  
19 prejudice.

20 The clerk is ordered to provide copies of this order to Plaintiff and to all counsel.

21 Dated October 23, 2018.

22 

23 The Honorable Marsha J. Pechman  
24 United States Senior District Court Judge